(1) (3)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILAPUR (CHHATTISGARH)

WRIT PETITION NO. 4870 /2004

PETITIONER

Kashif Mohammed, son of Late Shri Noor Mohammed & Late Smt Safina Farhat, aged about 22 years, R/o. Panarapara, Jagdalpur, Distt. Bastar (C.G.)

VERSUS

RESPONDENTS

1. Union of India, through : the Secretary, ministry of Personnel, Public Grievances and Pension, (State Reorganization), 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

2. State of Chhattisgarh, through : the Secretary, Department of General Administration, Mantralay, D.K.S. Bhawan, Raipur (C.G.)

3. State of Chhattisgarh, through : the Secretary Department of Urban Development, Mantralay, D.K.S. Bhawan, Raipur (C.G.)

4. Director, Urban Administration, Raipur (Chhattisgarh)

5. Deputy Director, Urban Administration, Raipur, Chhattisgarh.

6. Chief Municipal Officer, Municipal Corporation, Jagdalpur, District Bastar (Chhattisgarh)

7. State of Madhya Pradesh, through : the Secretary, Department of Urban Development, Vallabh Bhawan, Bhopal (M.P.)

P.R. No. 4212/04 Presented by Shri [illegible] dated 8/11/04

20/11/04

RECEIVED COPY 20/11/04 Clerk to A.G. Bilaspur

R/C DIVAY HARIT Senior Counsel to Government of Chhattisgarh 8/11/2004 High Court

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.4870 OF 2004

Petitioner : Kashif Mohammed

versus

Respondents : Union of India and others

Present : Mrs. Fouzia Mirza, counsel for the petitioner.
Ms. Sharmila Singhai, counsel for respondent No.1.
Ms. Sunita Jain, Panel Lawyer for the State of Chhattisgarh/respondents No.2 to 5.
Mr. A.S.Kachhawaha, counsel for respondent No.6.
None appears for respondent No.7.

ORDER

(Passed on 22nd Day of February, 2007)

By this petition, the petitioner has sought for a writ in the nature of certiorari, challenging the validity of the order dated 10-6-2003 (P-10) and further a direction to appoint the petitioner on compassionate basis.

2. The father of the petitioner, namely, Late Shri Noor Mohammed died while working as Lower Division Clerk in the office of the Municipal Corporation, Jagdalpur, in harness. The father of the petitioner died way back (learned counsel appearing for the petitioner is not in position to give the exact date of death of Late Shri Noor Mohammed). On his death, mother of the petitioner, namely, Smt.

Safina Farhat was granted appointment on the post of Revenue Moharrir on compassionate basis. She also died on 6-7-1997. After her death, second wife of the deceased – father, i.e., step-mother of the petitioner made an application for compassionate appointment. On rejection of her application, a writ petition, being Writ Petition No.2987 of 1999, was filed in this Court. This Court, vide order dated 10-9-2001 (P-5), dismissed the petition as withdrawn with an observation that the order of the withdrawal of the petition would not stand in the way of consideration of the case of the son of the writ petitioner. The present petitioner is son of the writ petitioner in Writ Petition No.2987 of 1999. The State Government rejected the application of the petitioner, which is impugned herein.

3. Learned counsel appearing for the petitioner submits that the petitioner has made an application for compassionate appointment on the ground of being dependent on mother Late Smt. Safina Farhat, who was appointed as Revenue Moharrir on compassionate basis on the death of her husband, who happened to be father of the petitioner.

4. Now the question arises for consideration in this petition is as to whether the mother of the petitioner, who was appointed on compassionate basis on the death of the deceased – husband, has right to the post.

5. It is well settled that compassionate appointment is not in accordance with the constitutional scheme of employment and this is back door entry.

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6. The Hon'ble Supreme Court, in ***Haryana State Electricity Board and another*** vs. ***Hakim Singh***[1], held as under :-

> "8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

> "12. ..... It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member."

7. The Hon'ble Supreme Court, in ***State of J&K and others*** vs. ***Sajad Ahmed Mir***[2], held as under :-

> "11. ..... it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

> "12. In *State of Haryana* v. *Rani Devi*[1] it was held that the claim of the applicant for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand

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the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right."

8. It is thus clear from the decisions cited above that the petitioner cannot claim compassionate appointment by virtue of a right of inheritance. Even otherwise, since the appointment of his mother itself was unconstitutional and she has no right to the post, further appointment on compassionate basis would be illegal and unconstitutional.

9. For the reasons mentioned hereinabove, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (1997) 8 SCC 85

2 (2006) 5 SCC 766

Gopal